TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

HB 767 – SB 972

April 6, 2015

SUMMARY OF ORIGINAL BILL: Enacts the "For-Profit Benefit Corporation Act" for the purpose of regulating all for-profit benefit corporations and establishing the organizational structure within Tennessee such that all for-profit benefit corporations may file articles of incorporation with the Secretary of State. Specifies that unless otherwise provided in this bill, the Tennessee Business Corporation Act (TBCA) will generally be applicable to all for-profit benefit corporations. A for-profit benefit corporation may be subject simultaneously to the provisions of the bill and the TBCA. The provisions of this bill will take precedent over the TBCA and the Tennessee Professional Corporation Act. States that no provision of the articles of incorporation or bylaws of a for-profit benefit corporation may limit, be inconsistent with, or supersede the provisions of this bill. Delineates requirements and provisions that will govern for-profit benefit corporations.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - Exceeds $5,000/General Fund/Recurring
$900/Department of State/One-Time
$200/Department of State/Recurring

Increase State Expenditures - $75,300/General Fund/One-Time

IMPACT TO COMMERCE OF ORIGINAL BILL:

Increase Business Revenue – $75,300/One-Time

Increase Business Expenditures – $900/One-Time

Jobs Impact – Positive but unknown

SUMMARY OF AMENDMENT (004754): Changes references of “articles of incorporation” to “charter” in Section 1. Explicitly states the For-Profit Benefit Corporation Act shall take precedence over the Tennessee Business Corporation Act for “for-profit benefit corporations.” Makes technical non-substantive changes. Removes requirement that the annual benefit report shall delivered to the Secretary of State. Changes effective date from “upon becoming law” to “January 1, 2016”.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue – $1,100/FY15-16
Exceeds $5,200/FY16-17 and Subsequent Years

Increase State Expenditures - $39,200/FY15-16

Assumptions for the bill as amended:

- The Department of Revenue (DOR) reports that any for-profit benefit corporation (B-corp) will be subject to franchise and excise taxes without exception.
- DOR indicates a B-corp will likely have a lower average tax liability when compared to other for-profit businesses due to a B-corp not being motivated exclusively by profits.
- DOR reports the average F&E tax liability in TN to be approximately $10,571; this is based on approximately $1,850,000,000 in annual F&E tax collections for approximately 175,000 taxpayers.
- The estimated F&E tax liability for a B-corp is estimated to be approximately $5,000 per entity.
- It is not known how many companies will relocate to, or will originate in, Tennessee as a direct result of this bill.
- Given the organizational framework provided by this bill, at least one entity will elect to either move to Tennessee, or originate in Tennessee, as a B-corp as a direct result of the bill. Such entity is presumed not to organize in Tennessee in the absence of the bill. Given the January 1, 2016 effective date for the amended bill, franchise and excise tax revenue generated will be from tax year 2016 due and payable during FY16-17 and subsequent years. Therefore, a recurring increase in franchise and excise tax revenue exceeding $5,000 beginning in FY16-17.
- Other businesses that elect to form as a B-corp are assumed to be existing businesses with other organizational structures that will amend their charters to form as a B-corp. These entities are presumed to continue paying their current franchise and excise tax liabilities. Therefore, no other change in F&E tax collections relative to these entities.
- The Department of State (SOS) reports a one-time increase in state expenditures will be required to modify the Tennessee Business Entity Annual Report (TNBEAR) system, which is the computer system used to process business entity filings and annual reports.
- Based on the information provided by the department, the one-time increase in state expenditures is estimated to be $31,200; such estimate is based on 312 hours of programming and coding modifications at $100 per hour paid to a third party vendor.
- SOS indicates additional business computer system analysis and testing will be required by the vendor to effectuate all system modifications. The additional one-time increase in state expenditures is estimated to be $7,990; such estimate is based on 94 hours of testing at $85 per hour paid to the third party vendor.
- The Department of State will require an appropriation for such expenses; therefore, the total one-time increase in state expenditures from the General Fund is estimated to be $39,190 ($31,200 + $7,990). These expenses will occur in FY15-16 but after the January 1, 2016 effective date.
- SOS estimates nine entities will form as B-corps as result of the bill; one either moving to or originating in Tennessee, and eight that will be existing Tennessee entities that

amend their charters and undergo an organizational restructuring to become a B-corp. By statute T.C.A. 8-21-205 fees collected by the Secretary of State are allocated 97% to the General Fund and 3% to the Secretary of State. SOS reports a formation fee of $100; thus, a one-time increase in state revenue of $900 (9 entities x $100). All of this revenue is assumed to occur in FY15-16, but after the January 1, 2016 effective date.

- Pursuant to provisions contained in the bill, the SOS may charge a fee for filing an annual report. The fee is estimated to be $20 per year; thus, a recurring increase in state revenue of $180 (9 entities x $20). This recurring increase is assumed to begin in FY15-16, following the effective date of January 1, 2016.
- Pursuant to Tenn. Code Ann. § 8-21-205 fees collected by the Secretary of State are allocated 97 percent to the General Fund and 3 percent to the Secretary of State.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

Increase Business Revenue - $39,200/FY15-16

Increase Business Expenditures - $1,100/FY15-16
$5,200/FY16-17 and Subsequent Years

Jobs Impact – Positive but unknown

Assumptions for the bill as amended:

- Current Tennessee companies that elect to reorganize to become a B-corp entity are not anticipated to create any additional impact to commerce.
- A recurring increase in business expenditures exceeding $5,000 per year, beginning in FY16-17, as one new market entrant pays their franchise and excise tax liability.
- A recurring increase in business expenditures of $200, beginning in FY15-16, as a result of paying annual filing fees for benefit reports.
- A one-time increase in business expenditures of $900, beginning in FY15-16, as a result of formation fees.
- The total increase in business expenditures in FY15-16 is estimated to be $1,100 ($200 + $900).
- The total recurring increase in business expenditures beginning in FY16-17 is estimated to be $5,200 ($5,000 + $200).
- The SOS will pay the third party vendor a sum total of $39,198 for computer system modifications and testing; thus, a one-time increase in business revenue of $39,190 to the third party vendor.
- To the extent one or more businesses elect to move to, or originate in Tennessee as a result of the bill, there will be a positive impact to the economy as new job opportunities will be created. The extent of any job creation is dependent upon unknown factors and cannot be reasonably quantified.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Jeffrey L. Spalding, Executive Director

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